

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Scott Brandsrud,

Civ. No. 23-1047 (PAM/ECW)

Plaintiff,

v.

ORDER

Dawn Hespenheide, Donald
Hedlund, Edward Christian, and
Hennepin County Court,

Defendants.

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Elizabeth Cowan Wright dated May 9, 2023 (Docket No. 3). The R&R recommends dismissing this matter without prejudice for failure to prosecute because Plaintiff Scott Brandsrud has failed to pay the filing fee. Brandsrud filed a timely objection to the R&R, contending that he has paid the filing fee and attaching documents purporting to represent a cashier’s check dated April 24, 2023, and a UPS mailing receipt indicating that Brandsrud mailed something to the Clerk of Court on April 27, 2023. (Docket No. 4; see also Docket No. 4-1 at 8, 10.) The Court has not received the filing fee from Brandsrud for this matter, although Brandsrud paid the full filing fee in another matter filed in this District on April 26, 2023, Brandsrud v. Hespenheide, Civ. No. 23-1181 (JRT/TNL).

This Court must review de novo any portion of an R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. L.R. 72.2(b). After conducting the required review and for the following reasons, the Court **ADOPTS** the R&R. (Docket No. 3.)

Although he claims to have done so, Brandsrud has not paid the filing fee in this matter. Dismissal under Fed. R. Civ. P. 41(b) is therefore appropriate. But dismissal would likely be appropriate in any event. Not only is the Complaint Brandsrud filed in this matter substantively identical to that filed in 23cv1181, but these lawsuits represent the second (and third) time Brandsrud has attempted to challenge Minnesota state probate-court decisions in this District. See Brandsrud v. Hespenheide, Civ. No. 22-1959 (WMW/DJF). As Judge Wilhelmina M. Wright noted in dismissing Brandsrud's claims, his challenges to state-court proceedings are clearly barred by res judicata. Feb. 15, 2023, Order (Docket No. 32), Civ. No. 22-1959 (WMW/DJF) (D. Minn.).

Brandsrud is apparently undeterred by Judge Wright's admonition, having filed two new actions raising the same challenges previously dismissed. The question then becomes whether the Court should impose filing restrictions on Brandsrud for abuse of the judicial process. Federal courts have the authority to control and manage matters pending before them, including "plac[ing] reasonable restrictions on any litigant who files non-meritorious actions for obviously malicious purposes and who generally abuses judicial process." In re Tyler, 839 F.2d 1290, 1293 (8th Cir. 1988) (quotation omitted). Pro se litigants have a right of access to the courts, but that right does not permit an unlimited opportunity to pursue malicious or abusive proceedings. Id. at 1292. When a litigant repeatedly files frivolous claims, the court may order him to obtain court approval before filing future lawsuits. Sassower v. Carlson, 930 F.2d 583, 584 (8th Cir. 1991).

Brandsrud's two recent filings show that he likely warrants placement on this District's list of restricted filers. The District of Minnesota's policy on restricted filers

provides that the Court should first warn the individual before placing them on the restricted filer list, however. Brandsrud is thus warned that, should he continue to press claims that have been previously rejected arising out of the state-court probate matter, his filing privileges will be restricted and he will be unable to file additional lawsuits arising out of the probate matter without first receiving permission of the Court or securing the assistance of counsel.

Accordingly, **IT IS HEREBY ORDERED that:**

1. The R&R (Docket No. 3) is **ADOPTED**; and
2. The Complaint (Docket No. 1) is **DISMISSED without prejudice** for failure to prosecute.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 23, 2023

s/Paul A. Magnuson

Paul A. Magnuson
United States District Court Judge